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Hower Construction, Inc. d/b/a the Hower Company and United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City & Vicinity AFL-CIO, and Laborers Local No. 264, Western Missouri and Kansas Laborers District Council of the Laborers International Union of North America, AFL-CIO. Case 17-CA-16812

April 27, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Upon a charge filed by the Unions on June 23, 1993, the General Counsel of the National Labor Relations Board issued a complaint on January 30, 1995, against Hower Construction, Inc. d/b/a The Hower Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 3, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 5, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 21, 1995, notified the Respondent that unless an answer was received by March 27, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Kansas City, Missouri, has been engaged as a contractor in the construction industry. During the 12-month period ending June 30, 1993, the Respondent, in conducting its business operations, purchased and received at its Missouri facility and/or at jobsites in Missouri goods valued in excess of \$50,000 directly from points outside the State of Missouri, and goods valued in excess of \$50,000 from other enterprises located within the State of Missouri, each of which enterprises had received these goods directly from points outside the State of Missouri. During this same period, the Respondent also performed services valued in excess of \$50,000 in states other than the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (Carpenters unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All carpenters, millwrights, pile driver men, and lathers, employed by Respondent on job sites in the counties of Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in the State of Missouri and the counties of Johnson, Miami, Linn, Leavenworth and Wyandotte in the State of Kansas, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

About December 16, 1986, the Respondent entered into the Kansas City Contractors Stipulation whereby it agreed to be bound by the collective-bargaining agreement between the United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City & Vicinity AFL-CIO (Carpenters Union) and the Builders Association of Missouri in effect at the time, and further stipulated to be bound to all subsequent agreements between the Builders Association of Missouri and the Carpenters Union unless timely notice of withdrawal from the stipulation was given as specified in the stipulation.

The Respondent, an employer engaged in the building and construction industry, granted recognition to

the Carpenters Union as the exclusive collective-bargaining representative of the Carpenters unit without regard to whether the majority status of the Carpenters Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, including an agreement effective from August 20, 1990, until March 31, 1993, and the most recent agreement which is effective for the period May 1, 1993, to March 31, 1996. For the period from December 16, 1986, to March 31, 1996, based on Section 9(a) of the Act, the Carpenters Union has been the limited exclusive collective-bargaining representative of the Carpenters unit.

The following employees of the Respondent (Laborers unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All General laborers, hod carrier/tenders and specialist laborers employed by the Respondent on jobsites in the counties of Jackson, Clay, Platte, Ray, Cass, Saline, Lafayette and Carroll in the State of Missouri and the counties of Wyandotte, Johnson and Miami in the State of Kansas, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

About February 20, 1989, the Respondent entered into a stipulation whereby it accepted and agreed to be bound by the collective-bargaining agreement between the Laborers Local No. 264, Western Missouri and Kansas Laborers District Council of the Laborers International Union of North America, AFL-CIO (Laborers Union) and the Builders Association of Missouri in effect at the time, and further agreed to be bound by all renewals, changes, or extensions thereto unless timely notice to terminate the stipulation was given.

The Respondent, an employer engaged in the building and construction industry, granted recognition to the Laborers Union as the exclusive representative of the Laborers unit without regard to whether the majority status of the Laborers Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, including an agreement effective from June 1, 1990, until March 31, 1993, and the most recent agreement which is effective for the period April 26, 1993, to March 31, 1996. For the period from February 20, 1989, to March 31, 1996, based on Section 9(a) of the Act, the Laborers Union has been the limited exclusive collective-bargaining representative of the Laborers unit.

Since about December 24, 1992, and continuing to date, the Respondent has failed and refused to continue in effect all the terms and conditions of its collective-bargaining agreements with the Carpenters Union by

abrogating their terms, including contributions to the Carpenters Union Fringe Benefits Programs including the health and welfare fund and pension fund, and has failed to remit supplementary dues pursuant to valid checkoff authorizations executed by the Respondent's employees. The Respondent engaged in the foregoing acts and conduct without the Carpenter Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

Since about December 24, 1992, and continuing to date, the Respondent has also failed and refused to continue in effect all the terms and conditions of its collective-bargaining agreements with the Laborers Union by abrogating their terms, including contributions to the Laborers Union Fringe Benefits Funds including the welfare fund, pension fund, vacation plan, and training fund, and has failed to remit supplementary dues pursuant to valid checkoff authorizations executed by the Respondent's employees. The Respondent engaged in the foregoing acts and conduct without the Laborers Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representatives of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions, since about December 24, 1992, to the Carpenters Union fringe benefit programs including the health and welfare fund and pension fund, and to the Laborers Union fringe benefits funds including the welfare fund, pension fund, vacation plan, and training fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be com-

puted in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union supplementary dues pursuant to valid dues-checkoff authorizations executed by the Respondent's employees, we shall order the Respondent to remit such supplementary dues to the Unions as required by the respective agreements, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Hower Construction, Inc. d/b/a The Hower Company, Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect all the terms and conditions of its collective-bargaining agreements with the United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City & Vicinity AFL-CIO, the most recent of which is effective for the period May 1, 1993, to March 31, 1996, by abrogating their terms, including contributions to the Carpenters Union fringe benefits programs including the health and welfare fund and pension fund, on behalf of its unit employees, and by failing to remit supplementary dues pursuant to valid checkoff authorizations executed by its employees, without the Carpenters Union's consent. The Carpenters unit includes the following employees:

All carpenters, millwrights, pile driver men, and lathers, employed by Respondent on job sites in the counties of Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in the State of Missouri and the counties of Johnson, Miami, Linn, Leavenworth and Wyandotte in the State of Kansas, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

(b) Failing and refusing to continue in effect all the terms and conditions of its collective-bargaining agreements with the Laborers Local No. 264, Western Missouri and Kansas Laborers District Council of the Laborers International Union of North America, AFL-

¹To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

CIO, the most recent of which is effective for the period April 26, 1993, to March 31, 1996, by abrogating their terms, including contributions to the Laborers Union fringe benefits funds including the welfare fund, pension fund, vacation plan, and training fund, on behalf of its unit employees, and by failing to remit supplementary dues pursuant to valid checkoff authorizations executed by its employees, without the Laborers Union's consent. The Laborers unit includes the following employees:

All General laborers, hod carrier/tenders and specialist laborers employed by Respondent on jobsites in the counties of Jackson, Clay, Platte, Ray, Cass, Saline, Lafayette and Carroll in the State of Missouri and the counties of Wyandotte, Johnson and Miami in the State of Kansas, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all contractually required contributions to the Carpenters Union fringe benefit programs including the health and welfare fund and pension fund, and to the Laborers Union fringe benefits funds including the welfare fund, pension fund, vacation plan, and training fund, which have not been made since about December 24, 1992, and make whole its unit employees for any expenses ensuing from the failure to make such contributions, as set forth in the remedy section of this decision.

(b) Remit to the Carpenters Union and the Laborers Union supplementary dues pursuant to valid dues-checkoff authorizations executed by its employees, as required by the respective agreements, with interest.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Kansas City, Missouri, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 27, 1995

James M. Stephens,	Member
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Margaret A. Browning,	Member
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Charles I. Cohen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of our collective-bargaining agreements with the United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City & Vicinity AFL-CIO, the most recent of which is effective for the period May 1, 1993, to March 31, 1996, by abrogating their terms, including contributions to the Carpenters Union fringe benefit programs including the health and welfare fund and pension fund, on behalf of our unit employees, and by failing to remit supplementary due pursuant to valid checkoff authorizations executed by our employees, without the Carpenters Union's consent. The Carpenters unit includes the following employees:

All carpenters, millwrights, pile driver men, and lathers, employed by us on job sites in the counties of Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and

Vernon in the State of Missouri and the counties of Johnson, Miami, Linn, Leavenworth and Wyandotte in the State of Kansas, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of our collective-bargaining agreements with the Laborers Local No. 264, Western Missouri and Kansas Laborers District Council of the Laborers International Union of North America, AFL-CIO, the most recent of which is effective from April 26, 1993, to March 31, 1996, by abrogating their terms, including contributions to the Laborers Union fringe benefits funds including the welfare fund, pension fund, vacation plan, and training fund, on behalf of our unit employees, and by failing to remit supplementary dues pursuant to valid checkoff authorizations executed by our employees, without the Laborers Union's consent. The Laborers unit includes the following employees:

All General laborers, hod carrier/tenders and specialist laborers employed by us on jobsites in the counties of Jackson, Clay, Platte, Ray, Cass, Saline, Lafayette and Carroll in the State of Missouri and the counties of Wyandotte, Johnson and Miami in the State of Kansas, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contractually required contributions to the Carpenters Union fringe benefit programs including the health and welfare fund and pension fund, and to the Laborers Union fringe benefits funds including the welfare fund, pension fund, vacation plan, and training fund, which have not been made since about December 24, 1992, and make whole our unit employees for any expenses ensuing from the failure to make such contributions.

WE WILL remit to the Carpenters Union and the Laborers Union supplementary dues pursuant to valid dues-checkoff authorizations executed by our employees, as required by the respective agreements, with interest.

HOWER CONSTRUCTION, INC. D/B/A THE
HOWER COMPANY